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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92043152
Party	Defendant SANTANA'S GRILL, INC. SANTANA'S GRILL, INC. 2067 Cecelia Terrace San Diego, CA 92110
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Submission	Opposition/Response to Motion
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Signature	/Michael A. Sandstrum/
Date	01/10/2007
Attachments	Registrant Opposition Mt ReOpen.pdf (11 pages)(346857 bytes) Dec of MAS Opp Mt Reopen.pdf (12 pages)(283248 bytes)

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SANTANA'S GRILL, INC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ARTURO SANTANA GALLEGO,

Petitioner,

v.

SANTANA'S GRILL, INC.,

Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

I hereby certify that this Opposition to
Petitioner's Motion to ReOpen and the
concurrently filed Declaration of Michael
A. Sandstrum, and all marked attachments,
if any, is being filed electronically with the
Trademark Trial and Appeals Board
Electronic Filing System.

1-10-07

Date



Michael A. Sandstrum

**REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO RE-OPEN
TESTIMONIAL DATES AND REPLY TO PETITIONER'S OPPOSITION TO
REGISTRANT'S MOTION FOR DEFAULT JUDGMENT**

Registrant, SANTANA'S GRILL, INC., hereby submits this Opposition to Petitioner's Motion to Re-Open the Testimonial Dates and Reply to Petitioner's Opposition to Registrant's Motion for Default Judgment, filed concurrently with Registrant's Motion for Sanctions under Rule 11 of the Federal Rules of Civil Procedure and 37 CFR § 10.18. Specifically, Petitioner

has not shown that Petitioner's failure to present testimony or other evidence during Petitioner's prescribed trial testimony period was "excusable" under the Federal Rules of Civil Procedure, Rule 6(b). *See Pumpkin Ltd. v. The Seed Corps.*, 43 USPQ2d 1582 (T.T.A.B. 1997). Petitioner concedes that the sole reason for failing to take testimony or seek to have the testimony periods re-set was the belief that a settlement had been achieved that would re-unite his family.

However, it was Petitioner that failed to execute the Settlement Agreement despite repeated promises that signatures were forthcoming. **Curiously, the reasons that Petitioner sets forth for failing to execute the written Settlement Agreement were never communicated to Registrant prior to Petitioner's Motion to Re-Open Testimony/Opposition to Registrant's Motion for Default Judgment.** In fact, Petitioner's counsel repeatedly expressed assent to the written Settlement Agreement and made several assurances to Registrant that Petitioner's signature, and all other necessary signatures, were en-route to Registrant.

Notwithstanding the above, the existence of settlement negotiations alone does not excuse Petitioner from complying with the deadlines imposed by the Board. *Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ2d 1858 (T.T.A.B. 1998).

I. RELEVANT STANDARD

Petitioner's Motion to Re-Open Testimonial Periods is governed by Federal Rule of Civil Procedure 6(b), made applicable to the Trademark Trial and Appeals Board under 37 C.F.R. 2.116(a). Federal Rule of Civil Procedure 6(b) provides that where the assigned testimony period has lapsed, the Court may, in its discretion, re-open the testimonial periods upon a sufficient showing by the moving party that the lapse was the result of "excusable neglect." The factors considered in determining the existence of excusable neglect include: (1) the danger of

prejudice to the nonmoving party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay; and (4) whether the moving party acted in good faith.

Pumpkin Ltd. v. Seed Corps. 43 USPQ2d 1582, 1586 (T.T.A.B. 1997).

II. ANALYSIS

Rather than addressing all four factors as outlined above, Petitioner only argues the first factor in support of his Motion to Re-Open. That is, Petitioner's sole argument to re-open the testimonial periods is that Registrant will not be prejudiced by the resetting of testimony dates. Registrant firmly disagrees. Furthermore, a consideration of all four factors clearly shows that Petitioner's neglect is inexcusable.

1. Registrant Will Be Prejudiced By Petitioner's Failure To Adhere To The Trial Testimony Period

In Petitioner's Motion to Re-Open, Petitioner argues that Registrant will not be prejudiced by a delay in resetting the testimony periods because Registrant has not shown any prior preparation for the testimonial periods as evidenced by the fact that Registrant has not taken any depositions in this case. While it is true that Registrant has not taken any depositions, Registrant and Registrant's counsel did spend considerable time, attorneys' fees and expense in preparing for both Petitioner's testimony period set to commence September 1, 2006 and its own testimony period set to commence on November 1, 2006. In particular, Registrant spent significant time and money exploring various legal theories and defenses in this matter based upon an extensive review of the court records, written discovery and document production undertaken by *both* parties in this case, prior motions and declarations of the parties, and client meetings in order to adequately prepare for anticipated deposition testimony and evidence in support of a final brief.

[Declaration of Michael A. Sandstrum ("Sandstrum Decl.") at ¶ 2]. Registrant also made efforts in early September 2006 to coordinate and schedule the testimony of Petitioner and various other witnesses for its testimony period in November 2006. [Sandstrum Decl. at ¶ 3, Exh. A]. The time expended by Registrant in preparation for the earlier testimony periods, **almost six months ago, has now been lost.** If the testimony periods are again re-set, Registrant will be forced to duplicate the time and money previously spent to refresh itself of the relevant evidence and adequately prepare for the testimony period. Moreover, because Petitioner continually refused to respond to Registrant's earlier requests for a status of settlement/signatures and notice that it would be forced to file a motion to dismiss per 37 C.F.R. § 2.132(a), Registrant was forced to expend time and money on a Motion for Judgment and the instant Opposition.

Further, Petitioner will not be denied a decision on the merits as this action is currently stayed in the federal district court pending the outcome of these proceedings. A decision on the merits here, although admittedly beneficial, is not dispositive of the underlying federal action.

2. Petitioner's Failure To Abide By The Prescribed Testimony Period And Delay Of The Instant Proceedings Frustrates The Interests Of Judicial Economy

Petitioner's testimony period expired on October 16, 2006 - per extension. Not only has Petitioner **waited over two months** to seek to have its testimony period re-opened, Petitioner has further delayed these proceedings by necessitating the time required for briefing and deciding the instant motions under submission. Similarly, in *Pumpkin*, opposer did not file its motion to reopen until nearly three and one-half months after the expiration of its trial testimony period. In denying opposer's motion to reopen, the Board found that the delay of proceedings and resultant impact on the Board's limited resources generally was not inconsiderable. *Pumpkin Ltd.* 43

USPQ2d at 1588. Specifically, the Board stated:

"The Board, and parties to Board proceedings generally, clearly have an interest in minimizing the amount the Board's time and resources that must be expended on matters, such as most contested motions to reopen time, which come before the Board solely as a result of a sloppy practice or inattention to deadlines on the part of litigants or their counsel. The Board's interest in deterring such sloppy practice weighs heavily against a finding of excusable neglect under the second *Pioneer* factor."

For the same reasons expressed above, Petitioner's motion should similarly be denied.

3. The Failure Of Petitioner To Comply With The Controlling Deadlines Was Wholly Within Petitioner's Control

Petitioner concedes that the sole reason for failing to comply with the controlling testimony period and "the failure to earlier seek the re-setting of the testimonial period flows solely from the honest and sincere belief that settlement had been achieved and that a settlement would reunite this broken family." (Petitioner's Motion To Re-Open, page 3, para. 2, lines 18-20). Petitioner asserts that because the parties believed a settlement was imminent, the parties did not seek to extend the time for Petitioner's testimonial period. **This assertion is untrue.**

As Petitioner's counsel recently stated in an email, until a settlement agreement is signed, anything can happen, and unfortunately it did when Petitioner backed out of the settlement that it had proposed two months before -- without warning and without good faith communication to Registrant's counsel - leaving Registrant in the dark. In fact, Registrant's counsel's email and telephonic communications to Petitioner's counsel went largely ignored, to the frustration of Registrant.

Further, Petitioner's testimony period was set to commence on September 1, 2006 and

expire on September 30, 2006. Instead of taking any testimony or submitting any evidence to the Board, on September 22, 2006, **Petitioner proposed a written settlement offer to Registrant.** [Sandstrum Decl. at ¶ 4]. The basic terms of the settlement proposal were acceptable to Registrant and in a good faith effort to negotiate a written Settlement Agreement, *Registrant* proposed that Petitioner's testimony period be extended. [Sandstrum Decl. at ¶ 5]. Registrant received Petitioner's consent and on September 26, 2006, it was *Registrant* that filed a consent motion with the Board to extend Petitioner's testimony period to October 16, 2006, leaving intact Registrant's own testimony deadlines.

However, by October 16, 2006, the close of Petitioner's testimony period, Petitioner had not submitted any testimony or evidence to the Board and did not seek any extension of its testimony period. From September 22, 2006 through the close of Petitioner's testimony period on October 16, 2006, Registrant was actively pursuing a written Settlement Agreement. Petitioner, however, expressed no interest in participating in the preparation of a written agreement. Thus, on October 12, 2006, Registrant electronically submitted a draft Settlement Agreement to Petitioner and requested Petitioner's feedback regarding the same. [Sandstrum Decl. at ¶ 6]. As of the close of Petitioner's testimony period on October 16, 2006, Petitioner had offered no comments, suggestions, or assent to Registrant's draft Settlement Agreement. In fact, it was not until October 27, 2006, after the expiration of Petitioner's testimony period, that Petitioner responded to Registrant's repeated attempts to solicit comment to its draft agreement.

Petitioner contends that it did not seek to extend its testimony period because a settlement was imminent. However, by the close of Petitioner's testimony period, Petitioner offered absolutely nothing by way of a written Settlement Agreement. Thus, it is unknown to Registrant why at this stage of settlement negotiations, Petitioner would assert that a settlement

was imminent and take no efforts to extend its trial testimony period. It was clearly within the control of Petitioner to timely seek an extension of its testimony period. The fact the parties were engaged in settlement discussions did not in any way prevent Petitioner from seeking a timely extension of its testimony period nor does it excuse Petitioner from compliance with trial testimony schedule. **The best evidence is the fact that Registrant diligently sought and obtain extensions of its trial testimonial period.**

**i. The Existence Of Settlement Negotiations Alone Is Insufficient To Excuse
Petitioner's Dilatory Conduct In Failing To Take Testimony Or Timely
Move For An Extension**

The existence of settlement discussions does not excuse Petitioner from adherence to the trial testimony period. *Atlanta-Fulton County Zoo Inc. v. DePalma* 45 USPQ2d 1858, 1859 (T.T.A.B. 1998). As indicated above, at the close of Petitioner's testimony period, the Settlement Agreement reached was merely tentative; the parties had not expressed written assent to a written agreement. As stated by the Board in *Atlanta-Fulton*, "[p]arties engaged in proceedings before the Board frequently discuss settlement, but the existence of such negotiations or offers, without more, does not excuse them from complying with the deadlines set by the Board or imposed by the rules." *Id.*

In evaluating the factors of excusable neglect in *Atlanta-Fulton*, the Board found that the moving party's inattention to the set schedule, although inadvertent, was the most dominant factor in the failure to timely present testimony. Furthermore, the Board stated that the delay of prosecution was detrimental to the orderly administration of Board proceedings. Thus, although there was no evidence of bad faith on the part of the moving party nor any specific prejudice to

the opposing party beyond mere delay, the Board held that such neglect was inexcusable.

For the same reasons, the Board in *Pumpkin* denied opposer's motion to reopen.

Specifically, the Board stated as follows:

"In the Board's considered opinion, the dominant factors in the "excusable neglect" analysis in this case are the second and third *Pioneer* factors. The absence of prejudice and bath faith in this case, under the first and fourth *Pioneer* factors, is outweighed by the combination of circumstances under the second and third *Pioneer factors* which are present in this case: opposer's failure, caused solely by opposer's negligence and inattention, to appear for trial in accordance with the trial schedule approved by the Board on opposer's own motion; the unnecessary and otherwise avoidable delay of this proceeding and expenditure of the Board's resources, which are direct results of opposer's negligence; and the Board's clear interest in deterring such negligence in proceedings before it, an interest which is shared generally by all litigants which cases pending before the Board." *Pumpkin Ltd* 43 USPQ2d at 1588.

Likewise, Petitioner's failure to abide by the trial testimony schedule was solely the result of its own fault which has resulted in a substantial delay of proceedings, the instant motions under submission, and an avoidable waste of the Boards limited time and resources.

4. Petitioner Acted In Bad Faith In Bringing The Motion To Reopen

The final factor for consideration in the evaluation of excusable neglect is whether the moving party acted in bad faith to delay proceedings. Based upon Petitioner's assertions in the Motion to Re-Open and its Opposition, **Registrant can only conclude that Petitioner was improperly motivated in seeking to have its testimony period reopened.**

In particular, Petitioner contends that the reasons for the failed settlement were due to Registrant's bad faith tactics - not true. Petitioner contends that threats by Registrant to impose monetary penalties for failing to execute the Settlement Agreement, disregard for the need to transcribe the agreement, and a clear indication that a settlement would not unite the family

prevented the parties from finalizing the Settlement Agreement. Again, the latter is simply not true.

Registrant vehemently denies that it disregarded the need to transcribe the agreement. On October 27, 2006, Petitioner's counsel confirmed that her clients were agreeable to the material terms of the written agreement prepared by Registrant but stated that the agreement would have to be translated from English to Spanish for the benefit of her clients. [Sandstrum Decl. at ¶ 8]. Registrant had no objection to transcribing the document. Further, **Registrant immediately revised the Settlement Agreement to reflect that a transcribed copy of the agreement would be attached as Exhibit A.** A copy of the revised agreement with this nominal notation was emailed to Petitioner on November 2, 2006 for transcription by Petitioner. [Sandstrum Decl. at ¶ 9]. The revised agreement contained absolutely no material changes to the Agreement.

Registrant made several follow-up telephone calls and emails to Petitioner after November 2, 2006, to inquire about the status of receiving a transcribed copy of the agreement and necessary signatures. [Sandstrum Decl. at ¶ 10]. However, Petitioner refused and failed to respond to Registrants repeated inquiries.

After hearing nothing from Petitioner in nearly two weeks, on November 13, 2006, Registrant advised Petitioner that if signatures were not received by November 15, 2006, then a \$5,000.00 per week penalty would be deducted from the agreed upon settlement amount to be paid to Petitioner for every week that the agreement remained unsigned (not per day has misrepresented in Petitioner's papers). [Sandstrum Decl. at ¶ 11]. In other words, Registrant noted that if signatures were not received by end of business day on November 15, 2006, a \$5,000.00 penalty would be deducted from the agreed upon settlement amount for every week that the agreement remained unsigned. **Of significance, at no time was the Settlement**

Agreement ever modified to reflect the threat of the monetary penalty.

That said, Petitioner incorrectly asserts in its moving papers that Registrant threatened a \$5,000.00 *per day* monetary penalty - the latter is not true, the email is clear as to the penalty. [Sandstrum Decl. at ¶ 11, Exh. B]. Although the Petitioner requested that the deadline (November 15, 2006) be extended, Petitioner did not object to the penalty/deduction or otherwise. **At no time prior to the Motion to Re-Open did Petitioner represent to Registrant that the monetary deduction would impede settlement efforts but instead continued to promise signatures.** Even after the deduction was communicated to Petitioner, **Petitioner continued to confirm that signatures were forthcoming.** [Sandstrum Decl. at ¶ 12]. If the imposition of a monetary deduction was a concern, why didn't Petitioner express this concern to Registrant and why did Petitioner continue to promise to execute the agreement?

Again, at no time did Petitioner's counsel say anything about the monetary penalty as being an issue. The first time the monetary penalty was ever communicated to Registrant as being a purported significant issue, was in Petitioner's opposition to Registrant Motion for Default Judgment and Petitioner's Motion to Re-Open. Consequently, the Board should disregard Petitioner's disingenuous claims that the threat of a monetary penalty was the reason for the derailed settlement - it is simply untrue. All one needs to do is review the numerous email communications between Registrant's counsel and Petitioner counsel (no mention of monetary penalty ever being a problem), attached hereto and attached to Registrant's Motion for Default Judgment, to see that Petitioner's statement regarding the monetary penalty is a red herring and simply an excuse to latch onto in the hope that the Board does not dismiss the case and reopens Petitioner's Trial testimonial period. The Board should not allow this type of suspect behavior.

Further, at no point in time did Registrant express to Petitioner that a settlement of this matter would not reunite the family. [Sandstrum Decl. at ¶ 13]. This statement by Petitioner is wholly unsupported and similarly was not previously expressed to Registrant. Registrant can only assume that these issues have been raised by Petitioner's counsel as a last ditch effort to prevent an unfavorable judgment.

Finally, Petitioner makes several references to statements allegedly made by Registrant's former counsel, Fred Beretta. According to Petitioner, these statements inhibited settlement talks. While Registrant cannot speak to such hearsay statements, Registrant points out that since new counsel's retention in April of 2006, there has been an open line of communication and willingness on the part of Registrant to engage in settlement discussions. References to alleged statements made by former counsel are clearly inappropriate and irrelevant to the instant motion.

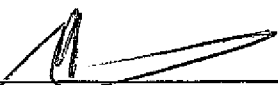
III. CONCLUSION

In consideration of the foregoing, it is respectfully requested that Petitioner's Motion to Reopen be denied and that Registrant's Motion for Judgment pursuant to 37 C.F.R. § 2.132(a) be granted.

Dated: January 10, 2007

BREMER WHYTE BROWN & O'MEARA LLP

By: _____


Nicole Whyte, Esq.
Michael A. Sandstrum, Esq.
Attorneys for Registrant
SANTANA'S GRILL, INC.

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SANTANA'S GRILL, INC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ARTURO SANTANA GALLEGO,

Petitioner,

v.

SANTANA'S GRILL, INC.,

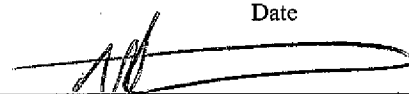
Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

I hereby certify that this Declaration of Michael A. Sandstrum, and the accompanying attachments, concurrently filed with Registrant's Opposition to Petitioner's Motion to Re-Open and Motion for Sanctions is being filed electronically with the Trademark Trial and Appeal Board Electronic Filing System.

1-10-07

Date



Michael A. Sandstrum

I, MICHAEL A. SANDSTRUM, HEREBY DECLARE THE FOLLOWING:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a partner in the law firm of Bremer Whyte Brown & O'Meara, attorneys of record for Registrant, SANTANA'S GRILL, INC., in the above-entitled cancellation proceedings. As such I have personal knowledge of the facts stated herein and if called upon as

a witness I could and would competently testify to the below facts which are personally known to me.

2. In preparation for the initial trial testimony periods set to commence in September 2006, Registrant and Registrant's counsel spent significant time and money exploring various legal theories and defenses in this matter based upon an extensive review of the court records, written discovery and document production undertaken by *both* parties in this case, review of depositions, prior motions and declarations of the parties, and client meetings in order to adequately prepare for anticipated trial testimony and evidence in support of a final brief.

3. As part of Registrant's efforts to prepare for the trial testimony periods, Registrant made efforts in early September 2006 to coordinate and schedule the testimony of Petitioner and various other witnesses for its testimony period in November 2006. (Attached hereto as Exhibit A are true and correct copies of emails from me to counsel for Petitioner, Cris Armenta, dated September 7, 2006, September 11, 2006, September 21, 2006 and September 22, 2006 regarding the scheduling of depositions).

4. On September 22, 2006, Petitioner made a written settlement offer to Registrant through its counsel of record, Cris Armenta. The basic terms of the settlement offer included the payment of certain monies to Petitioner in exchange for Registrant's exclusive right to use Registrant's registered service marks which are the subject of these proceedings, including exclusive right to use of the "Santana" name, and a dismissal of the pending action, among other terms. Registrant's payment of settlement monies to Petitioner was to assist Petitioner in changing signage, and other items bearing Registrant's service marks.

5. In an effort to prevent prejudice to the Petitioner while the settlement agreement was being negotiated, **Registrant proposed** a two-week extension of Petitioner's then pending testimony period which was set to close on September 30, 2006.

6. After not receiving a draft settlement agreement from Petitioner's counsel, on October 12, 2006, I emailed a copy of Registrant's draft Settlement Agreement and Mutual Release to Ms. Armenta.

7. On October 19, 2006, I sent a follow-up email to Petitioner's counsel, Ms. Armenta, requesting her and her clients' approval of the Settlement Agreement emailed on October 12, 2006, noting that time is of the essence with Registrant's impending trial testimony period set to open the following month. I also sent follow-up emails to Petitioner's counsel, Ms. Armenta on my blackberry regarding the status of Ms. Armenta's client signatures to the written settlement agreement.

8. Finally, on October 27, 2006 and again on October 31, 2006, Ms. Armenta sent written correspondence confirming that the proposed written Settlement Agreement and Mutual Release prepared by Registrant was acceptable to Petitioner. Ms. Armenta confirmed that the agreement would have to be translated from English to Spanish for the benefit of her clients.

9. In confirming Petitioner's acceptance of the proposed written Settlement Agreement and Release, on November 2, 2006, Registrant sent an updated copy of the Settlement Agreement to Petitioner for transcription from English to Spanish. The revised Settlement Agreement reflected

nominal additions, such as that a transcribed copy of the agreement would be attached as Exhibit

A. As I recall, no material changes were ever made to the Settlement Agreement.

10. With no response from Petitioner to my email dated November 2, 2006, I sent additional emails to Petitioner requesting immediate execution of the mutually agreed upon written Settlement Agreement and Mutual Release.

11. With Registrant's approaching testimony period, on November 13, 2006, Registrant sent written correspondence to Petitioner demanding that Petitioner's signatures to the Agreement be received by Registrant no later than November 15, 2006. As so much time had passed, promises made and broken by Petitioner, and because the delay was negatively impacting Registrant, Registrant further notified Petitioner that if signatures were not received by November 15, 2006, Registrant would deduct \$5,000.00 from the agreed upon monetary payment to be paid to Petitioner for every week that the signatures were not received -- not every day as misrepresented by Petitioner in his Motion to Re-Open and Opposition papers. (Attached hereto as Exhibit B is a true and correct copy of the email from me to Cris Armenta dated November 13, 2006).

12. On November 14, 2006, Ms. Armenta assured me that Petitioner's signatures to the written Settlement Agreement would be received by Registrant on November 20, 2006. Then again on November 17, 2006, Ms. Armenta confirmed that Petitioner's signatures were forthcoming. Further reassurance that the signatures would be delivered to Registrant was provided by Ms. Armenta on November 20, 2006.

13. A no point in time did I express to Petitioner that a settlement of this matter would not reunite the family.

14. At no point in time prior to the filing of Petitioner's Motion to Re-Open/Opposition to Motion for Default Judgment (December 22, 2006), did Petitioner communicate to Registrant any concern or impediment to settlement caused by the asserted monetary penalty, transcription issues, or alleged indications by Registrant that settlement would not reunite the family.

15. Registrant and Registrant's counsel spent considerable time, money and expense in preparing for the Trial Testimony periods just prior to Petitioner's settlement offer in September 2006. With Petitioner's continued promises that the written Settlement Agreement prepared by Registrant was acceptable and that signatures to the same would be forthcoming, the time spent by Registrant and Registrant's counsel in preparing for the Trial Testimony periods several months ago has been largely lost. As a result, in the event that the instant motion is denied, Registrant and Registrant's counsel will be required to expend substantial additional time, attorneys' fees and expenses to re-prepare (gear up) for the Trial Testimonial period. If the Motion for Default Judgment is denied, these fees and costs should be paid by Petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 10, 2007


By: 
Michael A. Sandstrum

EXHIBIT "A"

From: Mike Sandstrum

Sent: Thursday, September 07, 2006 1:17 PM

To: 'cris@armenta.com'

Subject: Meet & Confer Mtg -- Gallego v. Santana's Grill, Inc.: Our File No. 1174.272

Importance: High

Are you available next week to discuss scheduling, stipulated facts, witnesses, etc. I am available on Tuesday/Wednesday of next week (preferably Wednesday). Also, what's the status of the mediation which was tentatively set for 9-18? We would like to split the fees for a neutral interpreter to be present, please advise if that is acceptable. My month is filling up, hence, I would like to get the scheduling issues and locations resolved asap.

Also, what the status of Mr. Gallego, when can he be available for oral testimony? Please advise asap. I will have time tomorrow to discuss the case for about 30 minutes, between meetings and deposition. Are going to take the oral testimony of our clients, Pedro Santana, Arturo Santana Lee, Arturo Castaneda? If not, can you make them available for oral testimony in November? Please let me know asap.

I look forward to hearing from you.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

From: Mike Sandstrum

Sent: Monday, September 11, 2006 5:52 PM

To: 'cris@crisarmenta.com'

Subject: TTAB matter - Santana Arturo Gallego v. Santana's Grill, Inc.: Our File No. 1174.272

Importance: High

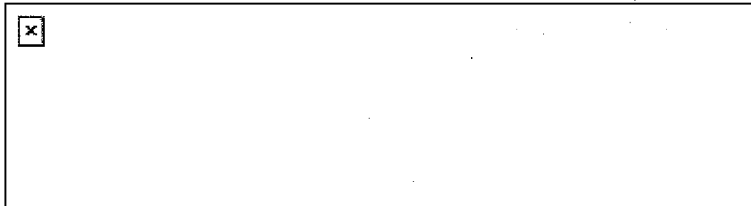
I have been trying to get in touch with you for sometime regarding scheduling, witnesses, stipulated facts, etc. for your trial testimonial period. I have not heard back. Please call me tomorrow and let me know your intentions, who you will be calling as witnesses, scheduling, etc. I would like to clear my schedule accordingly. Will you be taking the oral testimony of Petitioner, Arturo Santana Lee, Pedro Santana Lee and Mr. Arturo Castaneda? Also, will you agree to split the costs of an interpreter for mediation, and will your clients being present for mediation?? I have also not heard back from you whether you will abide by the prior stipulation to produce Mr. Santana Gallego for oral testimony. Please immediately advise.

As you know, mediation in this matter is set for September 18, 2006, at Mr. Keats office, time to be determined.

In any event, please call me to discuss.

Thanks

Michael Sandstrum, Esq.
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20320 S.W. Birch St. 2nd Floor
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(949) 221-1001 fax



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Thank you.

From: Mike Sandstrum

Sent: Thursday, September 21, 2006 8:28 AM

To: 'cris@crisarmenta.com'

Subject: TTAB Proceeding - Petitioner's Trial Testimonial Period

Importance: High

It was a pleasure meeting with you and George. Per our conversation, I understand that you intend to call various witnesses next week, and that you will provide me with at least five days notice for each witness called. I assume that you will give notice in compliance with rules, including 703.01(d); 37 CFR § 2.123(c), etc. As you can appreciate, I will have no alternative to assert the proper objections if I am not provided with the five days/reasonable notice.

Please let me know if you have any questions.

Thanks

Michael Sandstrum, Esq.
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20320 S.W. Birch St. 2nd Floor
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(949) 221-1000
(949) 221-1001 fax



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Thank you.

From: Mike Sandstrum
Sent: Friday, September 22, 2006 10:49 AM
To: 'cris@crisarmenta.com'
Subject: Trial issues -- Gallego v. Santana's Grill: Our File No. 1174.272

Importance: High

Good News -- my email is up and running. FYI: I will be in the office until 12:30 today, and then in client meetings.

I hope you understand my position regarding notice. I am entitled to have sufficient opportunity to prepare for my examination of your witnesses and arrange my scheduling, etc., and it is necessary to know (formally) who is being called, when and where. I do not see my request as unreasonable in any respect, I am only asking what the rules require. Please provide formal notice in compliance with the rules. You would have to agree that requesting five days notice is not unreasonable, and at the mediation on Monday, I specifically asked that you provide me with the Notice asap.

As to the stipulations identified in your email, I simply do not have the authority to stipulate to the same.

As of this date, I would request that your witnesses be presented on Wednesday through Friday, with notice today by Noon as to who, when and where, etc -- which is minimal notice at best. I can only assume that you are going to ask me for more than three days notice during my client's testimonial period. Please email and fax your notices.

Also, per your email yesterday, you indicated that you are only calling Mr. Gallego and Arturo Santana Lee, is this still the case? Will you make Mr. Castaneda and Pedro available during my clients' trial testimonial period?

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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EXHIBIT "B"

From: Mike Sandstrum

Sent: Monday, November 13, 2006 1:15 PM

To: 'Cris Armenta'

Subject: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

Importance: High

Dear Cris:

Please let me know the status of obtaining your client signatures to the settlement agreement. Although I trust that you are using your best efforts, it has been over six weeks since the tentative settlement was in place. Consequently, my client's business/plans are being impacted. As such, please forward your client signatures to the Agreement by THIS WEDNESDAY NOV 15TH, 2006 @ 5:00 PM the end of this week, close of business. If all signatures are not timely forthcoming, \$5,000.00 will be deducted from the total payment of \$60,000.00 (monies to reimburse for the name change) for every week that the agreement goes unsigned. We will also need to begin my client's testimonial period in December, if we do not receive all of your client signatures.

If you have any questions, please let me know.

Thanks,

Michael Sandstrum, Esq.

Partner

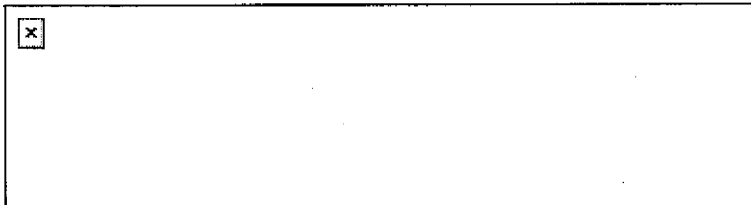
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